IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.8.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.22601 of 2007 &
M.P.Nos. 1 & 2 of 2007

K.P.S.Elango .. Petitioner

vs.

1. The District Collector,
   Salem.

2. The Assistant Director,
   Rural Development,
   Salem.

3. The Commissioner,
   Panchayat Union,
   Veerapandi,
   Salem. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the third respondent pertaining to the Impugned Notice in Na.Ka.No.3941/2005/A2, dated 12.12.2006, serial number 3 and 4 and consequential Notice in Na.Ka.No.3941/2005/A3, dated 25.6.2007 and quash the same.

For petitioner : Mr.S.Kumar

For respondent : Mr.A.Arumugam, A.G.P. for RR1 & 2
Mr.R.Mahadevan, A.G.P. for R3.

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O R D E R

1. With the consent of the learned counsels appearing on either side, the writ petition is taken up for final disposal.

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2. It is submitted by the petitioner that the third respondent had conducted an auction for the fishing right in S.Papparapatti Village, Attayampatti Taluk, Salem District, for the period from 1.7.2006 to 30.6.2007. The petitioner was the successful bidder and he had paid the bid amount of Rs.4,55,000/- and as such the said auction was confirmed in his favour by the first respondent.

3. It is further submitted by the petitioner that the tender condition No.1 is the Renewal Clause and as per the said clause, the successful bidder has to pay 10% of the lease amount, in addition to the original lease amount, for the renewal of the lease in the succeeding year. In other words, the lease can be renewed every year by paying the lease amount plus 10% of the lease amount, in every succeeding year, up to a period of 5 years. The first year lease period for the S.Papparapatti Lake had expired on 30.6.2007 and the petitioner is willing to pay the original lease amount of Rs.4,55,000/-, along with 10% of the said lease amount, for renewing the lease for the second year i.e., from 1.7.2007 to 30.6.2008. While so, the third respondent had insisted on the petitioner paying 12% of the sales tax i.e. Rs.54,600/- and 20% of surcharge i.e. Rs.10,920/- amounting to a total of Rs.65,520/-, as demanded in the notice, dated 12.12.2006. The petitioner has submitted that as per entry 26 (i) of the Third schedule of the Tamil Nadu General Sales Tax Act, 1959, fish is an exempted item and no Sales Tax or Surcharge can be levied on the same. Hence, the petitioner has preferred the present writ petition challenging the impugned proceedings, dated 12.12.2006, issued by the third respondent.

4. The learned counsels appearing on behalf of the respondents have not refuted the claims made on behalf of the petitioner.

5. In such circumstances, the impugned proceedings of the third respondent, Na.Ka.No.3941/2005/A2, dated 12.12.2006, is set aside to the extent it levies sales Tax at 12% amounting to Rs.54,600/- and Surcharge at 20% amounting to Rs.10,920/- for a total amount of Rs.65,520/- and the petitioner is permitted to pay the remaining amount of 4,55,000/-, along with 10% of the said amount for renewal of lease for the year from 1.7.2007 to 30.6.2008, and on such payment being made, the third respondent is to pass appropriate orders thereon, within a period of four weeks thereafter.

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6. With the above directions, the writ petition is disposed of. No costs. Consequently, connected M.Ps. are closed.

akv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Collector,
   Salem.

2. The Assistant Director,
   Rural Development,
   Salem.

3. The Commissioner,
   Panchayat Union,
   Veerapandi,
   Salem.

+ 1 cc to the Spl Government Pleader (Taxes) SR No. 53382

+ 1 cc to the Government Pleader, SR No.53319

+ 1 cc to Mr. S. Kumar, Advocate SR No. 53237

+ 1 cc to Mr. K. Elango, Advocate SR No. 53616

VC(CO)
SR/21.9.2007

W.P.No.No.22601 of 2007

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